

Translation

PATENT COOPERATION TREATY

PCT/EP2003/008695



PCT

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BN 5074 WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/008695	International filing date (day/month/year) 06 August 2003 (06.08.2003)	Priority date (day/month/year) 07 August 2002 (07.08.2002)
International Patent Classification (IPC) or national classification and IPC G01N 15/14, G01N 33/15		
Applicant BAVARIAN NORDIC A/S		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 02 March 2004 (02.03.2004)	Date of completion of this report 24 November 2004 (24.11.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages _____ 1-10 _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages _____ 1-14 _____, filed with the letter of 04 October 2004 (04.10.2004)
- ☒ the drawings:
pages _____ 1/2-2/2 _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-14	YES
	Claims		NO
Inventive step (IS)	Claims	1-14	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-14	YES
	Claims		NO

2. Citations and explanations

This report makes reference to the following documents:

- D1: GB-A-1 043 032 (IBM) 21 September 1966 (1966-09-21)
- D2: EP-A-0 579 467 (SNOW BRAND MILK PROD CO LTD) 19 January 1994 (1994-01-19), mentioned in the application
- D3: DE 11 34 223 B (EVANS ELECTROSELENIUM LTD; PAUL JAMES CROSLAND TAYLOR) 2 August 1962 (1962-08-02)
- D4: WO 00 11449 A (UNION BIOMETRICA INC) 2 March 2000 (2000-03-02).

1. The application relates to a filling device for capsules, in particular drug capsules, and to a method for pouring into collecting containers a specific quantity of capsules that are conveyed along with a flow of liquid, and contains independent claims 1 and 12.
2. The amended independent claims 1 and 12 meet the requirements of PCT Article 33(1) and (2) for novelty:

- 2.2 D1, which describes a method and a device for producing granules from raw material in powder form and water, is regarded as the closest prior art. The essential difference between the wording of (the amended) claim 1 and D1 is that D1 contains no conveying device that feeds a liquid medium, which has a defined volumetric flow and contains the capsules, to a receptacle. Although the raw material quantities are checked by the measuring device (7) and the process control computer (9) in D1, in D1 the raw materials are mixed on the rotating plate (1) with the aim of producing the granules, a portion of the water being utilized and the remaining portion of water, which is also almost undoubtedly conveyed by the feeds (5) and (13), not being fed with a defined volumetric flow to the receptacle.
- 2.3 Owing to the same feature, claim 12 is likewise novel within the meaning of PCT Article 33(1) and (2).
- 2.4 Furthermore, all of the dependent claims are novel within the meaning of PCT Article 33(1) and (2).
3. The technical problem to be solved, which is solved by the feature of the defined volumetric flow by means of which the liquid medium containing the capsules is conveyed to the receptacle, is regarded as that of allowing defined filling of the receptacle, for example a filling receptacle for drug capsules, both the liquid volume and the number of capsules being controlled and kept (almost) constant. Neither this technical problem, which is solved by the application, nor its solution is known

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from D1 or the other prior art documents. Therefore, independent claims 1 and 12 and the dependent claims also meet the requirements of PCT Article 33(1) and (3).

Prior art documents D2-D4 describe the following:

- D2: a method and a device for filling a container with a solid-liquid mixture;
- D3: a method for counting blood cells in dispersion and, in the prior art described therein, a photoelectric counting device for counting tablets;
- D4: a device for the analysis and immediate dispersion and orientation of multicellular organisms.